IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.566 OF 2003

State of Maharashtra .. Appellant (Orig.Complainant)

V/s

1. Navin Popatlal Gala
2. Shantilal Popatlal Gala .. Respondents (Orig.Accused Nos.1&2)

Mr.D.P. Adsule, A.P.P.for the appellant.
Mr. R.P. Adnani-complainant-in-person

CORAM : J.H. BHATIA, J.

DATE : 3RD MAY, 2007.

JUDGEMENT : -

. Heard Mr. Adsule, learned A.P.P. for the appellant-State. None for respondent, who is original accused.

2. To state in brief the respondent Nos. 1 and 2 were prosecuted for the offence punishable under section 325 r/w section 34 of Indian Penal code. On the basis of charge-sheet filed by Andheri Police Station, the case was registered as Criminal Case No. 313/P/1994 in the Court of Metropolitan Magistrate 12th Court, Andheri Mumbai. On 2nd June, 2001 charge was framed against both the accused under section 325 r/w Section 34 and

they pleaded not guilty. Thereafter on 18/7/2001, Medical Officer Dr. Ratilal Mdwani was examined as prosecution witness No.1. Thereafter as no witness was produced by prosecution, by the judgment and order dated 20th December, 2002 the learned Metropolitan Magistrate acquitted the accused for want of any evidence. The learned Metropolitan Magistrate noted that the prosecution had failed to produce even the informant/injured, who was reported to be not available on the address given. The prosecution has preferred this appeal against the acquittal contending that after examination of P.W. 1 Dr. Ratilal, the matter was adjourned to 14/9/2001. On that day the accused were absent but they were granted exemption and the matter' was adjourned to 7/12/2001. Before that date, on 17/9/2001 the complainant had appeared along with A.P.P. and filed application for change of his address. In the Rozanama dated 17/9/2001 note of that application was taken and APP was asked to take note of changed address. According to the prosecution the summons was not sent to the complainant/injured on his changed address in spite of his application and the summons was sent to him on the old address and therefore he was not available. It is contended that in view of this the prosecution has

been deprived of giving necessary evidence. Therefore, the order of acquittal is liable to be set aside and the matter should be remanded back for hearing afresh.

3. Perused the record and proceeding. It appears that even though the complainant had personally appeared on 17/9/2001 and had made an application about the change of his address. However, summons sent on his old address and, therefore, he could not be served. It appears that the mistake was committed by the Court staff while issuing summons but at the same time the APP was also not careful in pointing about the change of address and requesting for summons on the new address. In fact it appears that the prosecution could not examine any of the witnesses except the medical officer for long time. Anyhow the main reason given by the trial Court while acquitting the accused was that the complainant/injured was not available on the given address. In my opinion, due to issuance of summons to the complainant on the wrong address, he could not be served and he was deprived of giving evidence before the Court. In my opinion it is fit case where the order of acquittal should be set aside and the matter should be remanded back to the trial Court for disposal as per

law, after issuing summons to all the witnesses which may be required by the prosecution.

4. For the aforesaid reasons the appeal is hereby allowed.The impugned judgment and order dated 20th December, 2002 is hereby set aside and the Criminal Case No.313/P/1994 is hereby remanded back to the trial Court for disposal as per law. The learned Metropolitan Magistrate shall issue summons to all the witnesses including complainant Rajendra Purshottam Adnani on the address given by him. The APP shall give the list of the witnesses who are to be examined and all the witnesses shall be called by the Magistrate and the case shall be taken up on day-to-day basis till it is decided. As accused have not appeared before this Court, notice shall be sent to them by the trial Court before proceeding with recording of evidence.

(J.H. BHATIA, J.)